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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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LUCARIA TENORIO, et al., on behalf of
themselves and all others similarly situated
and in the interest of the general public,

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Plaintiffs,

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v.

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GABRIEL GALLARDO SR., an
individual; MANUEL GALLARDO, an
individual; SILVIA ESTHER
GALLARDO, an individual; KERN
COUNTY CULTIVATION, INC., a
California corporation; and NAZAR
KOONER, an individual,

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Defendants.

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No. 1:16-cv-00283-DAD-JLT

ORDER GRANTING LEAVE TO AMEND

(Doc. Nos. 27 and 28)

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On February 29, 2016, plaintiffs filed the complaint in this action alleging: (1) violation of
the Agricultural Workers Protection Act; (2) failure to pay minimum wages in violation of the
Fair Labor Standards Act; (3) failure to pay minimum wages in violation of the California Labor
Code; (4) failure to provide timely and complete meal and rest periods or pay additional wages in
lieu thereof; (5) failure to indemnify for necessary business expenditures; (6) knowing and
intentional failure to comply with itemized employee wage statement provisions; (7) failure to
pay wages of terminated or resigned employees; (8) payment of bad checks; (9) violation of Farm
Labor Contractor's Act; (10) violation of Unfair Competition Law; and (11) penalties pursuant to

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1 the California Labor Code Private Attorneys General Act. (Doc. No. 1.)

2 The deadline for the amendment of pleading in this action, established in the court's
3 Pretrial Scheduling Order as modified, was November 18, 2016. (Doc. No. 26.) On November
4 18 and 21, 2016, plaintiffs filed a motion to amend and an amended motion to amend the
5 complaint, seeking leave of court to file a second amended complaint adding Pawan S. Kooner,
6 d/b/a Pawan Kooner Farms, and Hardeep Kauer as named defendants, based upon allegedly
7 recently obtained evidence. (Doc. Nos. 27 and 28.) Defendants have not opposed plaintiffs'
8 motion to amend. On December 13, 2016, plaintiffs filed a reply in support of the pending
9 motion, noting defendants' failure to file an opposition. (Doc. No. 30.) For the reasons set forth
10 below, plaintiffs will be granted leave to amend.

11 LEAVE TO AMEND

12 "A party may amend its pleading once as a matter of course within: (A) 21 days after
13 serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after
14 service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f),
15 whichever is earlier." Fed. R. Civ. P. 15(a). Otherwise, a party must seek leave of court to
16 amend a pleading or receive the opposing party's written consent. Fed. R. Civ. P. 15(a)(2).

17 The Federal Rules of Civil Procedure provide that leave to amend pleadings "shall be
18 freely given when justice so requires." FED. R. CIV. P. 15(a)(2). Nevertheless, leave to amend
19 need not be granted where the amendment: (1) prejudices the opposing party; (2) is sought in bad
20 faith; (3) produces an undue delay in litigation; or (4) is futile. *See Amerisource Bergen Corp. v.*
21 *Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006) (citing *Bowles v. Reade*, 198 F.3d 752,
22 757 (9th Cir. 1999)). "Prejudice to the opposing party is the most important factor." *Jackson v.*
23 *Bank of Haw.*, 902 F.2d 1385, 1387 (9th Cir.1990) (citing *Zenith Radio Corp. v. Hazeltine*
24 *Research, Inc.*, 401 U.S. 321, 330–31 (1971).

25 There is nothing before the court to suggest bad faith on part of plaintiff or any undue
26 prejudice to defendants posed by the granting of leave to amend in this instance. Plaintiffs seek
27 to add Pawan S. Kooner, d/b/a Pawan Kooner Farms, and Hardeep Kauer as defendants based
28 upon evidence that was allegedly recently obtained. (*See* Doc. No. 27-1 at 5.) Defendants have


1 not opposed the motion and plaintiffs timely filed their motion to amend on the last day for doing
2 so under the modified scheduling order. (See Doc. No. 24.) Under these circumstances, the court
3 will grant plaintiffs' motion to amend the complaint and this matter will now proceed on
4 plaintiff's second amended complaint as the operative pleading.

5 **ORDER**

- 6 1. Plaintiffs' motion to amend and amended motion to amend (Doc. Nos. 27 and 28) are
7 granted;
- 8 2. Plaintiffs are granted leave to forthwith file and serve their second amended complaint,
9 which adds Pawan S. Kooner, d/b/a Pawan Kooner Farms, and Hardeep Kauer as
10 defendants;
- 11 3. The hearing set for December 20, 2016 at 11:00 a.m. on defendants' motion to amend is
12 vacated; and
- 13 4. Upon appearance by the newly served defendants in this action, the assigned Magistrate
14 Judge may consider whether the Scheduling Order of June 23, 2016 (Doc. No. 19) should
15 be modified further.

16 IT IS SO ORDERED.

17 Dated: December 19, 2016

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20 UNITED STATES DISTRICT JUDGE